

# ADMISSION OF CALIFORNIA.

## SPEECH

OF

HON. J. H. THOMAS, OF TENNESSEE,

IN THE HOUSE OF REPRESENTATIVES, MAY 27, 1850,

*In Committee of the Whole on the state of the Union, on the President's Message transmitting the Constitution of California.*

Mr. THOMAS said:

The California message was delivered to this House on the 21st of January last; and it has now been under discussion for four months.

I have been unable to obtain the floor until this late period; yet late as it is, I propose to express my views upon the subject. The "President's plan" has been often condemned, and never until last week has any southern member raised his voice in its defence. The honorable gentleman from Virginia [Mr. HAYMOND] has the honor (if honor it be) to be the first member from the South (if he may be called southern, being from that part of Virginia lying between Pennsylvania and Ohio) who has spoken in its favor. And how has it been from the North? Three or four northern men have sustained it, and they do so as a second choice, it being the next best thing in their estimation to the Wilmot proviso.

This short history shows with how little favor it is received. There may be others who will support it, but as yet they have made no declaration of such an intention. What is this "plan?" It is to admit California and to leave the territories without a civil government. And this is said to be a wise statesman-like "plan." If the North should insist that we must raise a revenue by a protective tariff, and the South that it should be collected by a revenue tariff, and the President should propose to settle the difference by advising to collect no revenue,—this, then, would be "wise and statesman-like." If the country were at war, and the North should insist upon a defence by sea and the South by land, and the President should compromise the difficulty by urging that no defence should be made,—then this would be "wise and statesman-like." So when the North insists that the territories shall be governed with the proviso, and the South that they shall be governed without it, it is "wise and statesman-like" for the President to recommend that they shall not be governed in any way.

The "President's plan" has so few advocates that it is needless to consume time in its discussion. So far the indications are, that the Administration is powerless to carry out its own plan; but it may be powerful for evil in defeating other plans for the settlement of this alarming question.

A plan for a compromise is now under consideration in the other branch of Congress. This plan, though, so far as I can judge, it does not do justice to the South, and should not be passed without important amendments, yet it is now proposed and advocated by its friends from just and patriotic motives. First among its advocates stands the senior Senator from Kentucky, [Mr. CLAY,]

who has been the architect of the Whig party, its leader in its greatest trials. His great object is, to settle all difficulties upon the subject of slavery, and to quiet, and quiet forever, this agitation upon the subject. This is a patriotic object, one that should command the respect of every well-wisher of the Union; yet, sir, we find the Administration arrayed against it, and every northern friend of the Administration in the Senate and in this House, so far as is known, are opposing it. In the Senate, they voted against the compromise committee, and they voted to lay the compromise bill upon the table—thus endeavoring to defeat even the effort for a settlement. And, sir, so far as the northern Whig members of this House have indicated their opinions, they are for a corresponding effort to thwart all proposed adjustment. It remains yet to be seen, whether the friends of the Administration south (some of whom may favor, without the boldness to advocate the plan of the President) will yet aid it by opposing all others, for the defeat of all others is the success of the President's plan, it being simply to do nothing, so far as concerns the territories; and the resistance of all measures to settle this question, so far, seems the chief aid that the President receives from his friends in both branches of Congress. And, sir, when we remember, that barely two years ago, in a time of war, when military governments were established by the late Administration, how bitterly this measure was denounced by the Whig party north and south, and when the friends of that Administration justified it alone upon the ground that it was authorized by the laws of war, and that so great was the condemnation of the Whigs, that they threatened to impeach the President for what they were then pleased to call high-handed usurpation. Now, sir, when it is recommended by the President of their own choice to continue such military rule indefinitely, in a time of peace, as the settled policy of the country, and for this President to ask many of the identical men, who were loudest and boldest in their denunciation of this very measure, even in a time of war, now, in a time of peace, to sustain it, I am not surprised that they should hesitate, and even refuse, to give it their support.

The importance of creating civil governments for these territories has been so ably discussed by those who have preceded me, and is so generally approved, that I think it needless to say more upon this part of the subject.

Can it be true that this great and happy Government is in danger? If so, whence comes it? If a stranger were told the history of the trials and dangers encountered and overcome, and the un-



paralleled advancement and improvement of the country, and the universal prosperity that over-spreads this Republic, and then told that all this was in imminent peril of destruction, he would look abroad to see what great enemy to happiness and to man was approaching—what fell serpent was seeking the destruction of this fair Eden of the earth. It would never be supposed that the danger came from any of the recipients of these unnumbered blessings—from any of the children of this Government. Yet strange as it is, it is true, that the danger comes from no foreign invader—from the hands of no ruthless barbarian, but from the discontents, jealousies, and sectional feelings of our own citizens. From this source all real dangers to this Government have ever come. It may be said that our General Government is created and controlled by a Constitution—that all have assented to this, and all should be therewith content. This is true; but since the adoption of this Constitution two parties have existed in the country, one that insists that the Constitution shall be construed strictly, and another contending for a more liberal construction—(I mean not so much to apply these remarks to the political parties, Whig and Democrat which now prevail, for there are many Whigs who contend for this general rule of strict construction, and at this day there are some who claim to be Democrats who are for measures that cannot be maintained but by the most unlicensed construction of that instrument.) Refer, if you please, to the history of the past. During the existence of this Government, from the adoption of the Constitution to this hour, whenever Congress has confined itself to the exercise of its powers as granted by the plain letter of the Constitution, its measures have received almost the universal acquiescence of the people, and harmony and peace have prevailed. And on the contrary, every serious discontent has arisen from the unwarrantable attempt upon the part of Congress to increase and usurp powers, beyond those granted in its creation. This was true in 1798, when Congress restrained the liberty of the press. It was so in 1820, when Congress assumed the power over slavery in the territory of Missouri. It was so in 1832-'3, the days of nullification, when Congress claimed the power to tax one portion of the people of the Union for the benefit of another, by means of a protective tariff, "a tariff for protection merely." It is so now, when Congress is attempting to control the subject of slavery in the Territories.

Every member, before he was permitted to enter upon the discharge of his duties here, was required and did take an oath to support the Constitution. Now, sir, under this oath how are the members from the various sections of the Union to vote upon this important question of slavery in the Territories?

A majority of the southern Whigs will say that the Constitution confers no powers upon Congress to legislate upon the subject of slavery other than those specially enumerated; that this grant of power was made for the benefit of the grantors—the people and the States—and that it must be strictly construed. A true Democrat will tell you that it has ever been a fundamental principle of his party, that Congress has no powers but such as are plainly given by the Constitution; that it was upon that principle that his political ancestors contended with the elder Adams and defeated him; that it was upon the same principle his party resisted the ef-

forts of the North to defeat the admission of Missouri; and that it is upon this principle that his party has ever opposed a "tariff for protection;" and that it was upon this principle that Andrew Jackson fought and vanquished the United States bank; and that upon the same time-honored principle he will now vote against the present assumption, this wicked union-destroying effort to exclude the South from a share of the newly-acquired territories. Sir, if there is any consistency in men it is easy to know how the real Democrats will vote upon this measure. They will oppose it by every means in their power. To these two classes, then, I have little to say.

But there are others here to whom much may be said. How will the northern Democrats vote? Just here, I take pleasure in quoting from the speech of my honorable colleague, Mr. WILLIAMS. He says:

"I have heard several members from the other (the Democratic) side of the House declare their willingness to trample under foot the Wilmot proviso, and so to quiet the public mind; and I am also informed, from a reliable source, that there are twenty Democrats, members from free States, willing to risk their popularity, and settle the question, on terms demanded by the South two years ago. I honor them, both for their patriotism and their courage. It has been my boast that I had ever belonged to the great conservative party of the Union—to the Whig party. It is a mortifying fact to me, that up to this hour, no Whig in the House of Representatives has yet avowed, in his place, his determination to follow the self-sacrificing example that has been set on the other side.

Now, Mr. Chairman, the remark of this gentleman is still true—no northern Whig in this House has yet avowed himself as being ready to give the South any portion of the newly-acquired territories. Upon what principle does this party—the northern Whigs—construe the Constitution? The party repudiate the old republican doctrine of strict construction, and have always labored to enlarge the powers of the General Government, by every means; upon this ground they have ever acted. Upon it they sustained the alien laws of John Adams, they opposed the admission of Missouri; when they go for protection, they advocated the charter of a United States bank—and upon the same principle they now insist upon their power to exclude slavery from the territories. These gentlemen are the only ones who can consistently support the proviso. To such men it is useless to argue constitutional objection; they have been so long accustomed to construe that instrument to suit their own ideas of expediency, that it is labor lost to attempt to change their views upon this point; and we, as a last resort, must seek to convince them that their proposed restriction is inexpedient. Unless we should succeed in this, they will vote for it, the consequence ever so disastrous. So far, then, we have only the northern Whig party for the measure of exclusion against the South, and the Democratic party and the southern Whigs against it. But, sir, there is another class of men here who unite with the northern Whigs in supporting the measure—a class, too, which has to repudiate a great principle upon which they claim a distinct political existence, and do this to enable them to associate and affiliate with a party which they have ever denounced and still denounce as Federalists,—and now, sir, they are contradicting all that they have ever said and putting the seal of condemnation upon all their protestations. I say this not by way of irritating or wounding the feelings of gentlemen, but because they are so contrary to truths.



But, sir, is it true that the Constitution of the United States vests no power in Congress to exclude slavery from the Territories? Mr. Madison, in his letter to Mr. Monroe of the 23d of February, 1820, speaking of "whether a territorial restriction be an assumption of legitimate power," says—"for myself I must own that I have always leaned to the belief that the restriction was not within the true scope of the Constitution." We will not rely simply upon the opinions of men—we will refer to the Constitution itself, and here if such power exists surely its friends can point it out. It is a remarkable fact, that it is rare that you hear a northern man refer to the Constitution upon this subject. A power is claimed by them, under the Constitution; it is denied by the South; and those who claim it seldom refer to that instrument, and more seldom agree as to what part contains the grant. One will have it that the power to declare war and to make treaties, must extend to the government of the territories that may be acquired by their means; and to govern, they maintain, gives authority to exclude slavery. Another will have it that the clause authorizing the Congress to "make all needful rules and regulations respecting the territories and other property of the United States," gives the power; whilst quite a number place it upon the ground of precedent, and say that it has been done and acquiesced in, and should therefore be done again. Others say that the power results from the whole instrument taken together. These are all the grounds I remember to have heard claimed. Let us consider them severally, and see what they avail. It is a principle generally admitted, that where a country is gained by conquest or by purchase, the sovereignty of the acquired country is merged in the sovereignty of that to which it is annexed. In monarchical governments, as in Great Britain, where the theory is that the King is the source of all power and honor, and that all the property and liberties of the subjects are enjoyed merely by favor from the monarch, and that all sovereignty not expressly granted to other branches of the government or to the people still vests or remains in the King, there the sovereignty of acquired territory vests properly in the Crown. I understand this to be good law—good British law—so held and approved in England, and it is probably so in all the Governments of Europe; but it is not so in the United States. Here the people are sovereign, originally, on their own right. By means of the Federal Constitution they created a Government, and vested with only so much sovereign power as was deemed indispensable for the purposes for which they created it. So intent were the framers of the Constitution upon this, that they made it an article, that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people."

Upon the theory of the British Government, the sovereignty of acquired territory vests in the King; in the American it vests in the States or the people, except so far as the grants of the Constitution vest it in the General Government. The General Government can do nothing as principal, but must act solely as the agent of its creator. Its acquisitions are for the States and the people, and not for itself. When it acquires territory, it is for the States and the people, and it must dispose of it as the States and the people have directed in

the Constitution. It has no original sovereignty over it. It cannot establish a religion, grant titles of nobility, or do anything forbidden by the Constitution, or not authorized by that instrument, more than in the territories possessed by the United States at its formation; and all subsequently acquired territory is in the same situation, and to be disposed of in a similar way with that first held by the General Government. The result of such an acquisition by treaty or conquest is to place the territory thus acquired under the power of the Government, to dispose of and make all needful rules and regulations respecting it, as of other property of the United States. There is, then, not even a fair pretence upon this ground to authorize the passage of the "proviso."

The question then occurs, what authority is conferred by the Constitution upon Congress by the clause which says, "the Congress shall have power to dispose of, and make all needful rules and regulations respecting the territory or other property of the United States." Is the "proviso" a "needful rule" or "regulation?" Congress has heretofore established many territorial governments without it. I may mention the Mississippi, Florida, Orleans, and Arkansas territories, at the South, and Minnesota at the Northwest. In these southern and southwestern territories slavery existed and continued until they were admitted as States, and still exists. It never was "needful" that slavery should be excluded from these territories. This Government has existed now more than sixty years, with ever-increasing prosperity; and during all this time it has never been deemed needful to exclude slavery from any portion of the country south of the line of the Missouri compromise, (and of this line I propose to speak further before I have done.) New Mexico and California were acquired by the treasure and blood of the whole Union, and it is not controverted, that the South at least contributed her full proportion. This newly-acquired territory is, then, the common property of the thirty States of this Union. Now, sir, is it needful, is it just, to exclude one-half of the Union from the enjoyment of these territories? We refer to the Constitution to ascertain the true and just understanding between the States. At the time of its adoption nearly all of the States held slaves; and can it be for a moment believed that it was intended, by this large majority, that it should ever be in the discretion of the General Government to decide whether it was "needful" to exclude an institution which they all legalized within their limits?

The clause under consideration extends not only to the making of "all needful rules" and "regulations" respecting the territories, but also respecting other property of the United States; and if it authorize the proviso as to the territories, it equally authorizes it as to the "other property." The United States own land, which is property, in New Mexico, in Illinois, and in Alabama. If to "make needful rules," &c., authorizes Congress to exclude slavery, it will authorize it alike to introduce it; and it will necessarily follow that Congress has the power to exclude slavery from the public lands in Alabama or Louisiana, and to introduce it into Illinois or Michigan. This is but the fair incontestable result of the power contended for, and yet this proposition is so absurd that there is no one who will give it his assent.

Now, sir, let a case analogous to this be stated, appertaining to the common affairs of life. And



the principles of justice are the same in all relations, whether as States or individuals. Let a partnership exist, with articles of partnership stipulating how its affairs shall be managed. Let it be provided that a majority of the partners shall have power to dispose of, and make all needful rules and regulations respecting, the territory or other property of the firm; and under these stipulations, lands have been acquired, and have become the common property of the partnership. Now, sir, the plain law and justice of the case would be, that the several partners may enjoy it to an equal extent. But let a majority of the partners become prejudiced against some of the family of the other partners, and under the article that authorizes them to make all needful rules and regulations, they should undertake to exclude the minority from all enjoyment of this common property. In this case, no man who claims for himself the least honesty or respectability, would hesitate for a moment to declare that the claim set up by the majority was arrogant and unjust in the highest degree. And yet this case differs in no essential particular from the one now under consideration.

But, sir, we may make the case still stronger. The minority says to the majority, if such is your opposition to us, and such your prejudices against us, that you will not enjoy this property in common with us, though you have no right to do so, yet for the sake of harmony, if you will set apart to us but a reasonable share of this common property, we will be content. No one would hesitate to say this is surely a fair proposition, such an one as if there be any justice in the majority they will accept.

If thirty wholly separate and independent governments had banded together for one common purpose, that of waging the recent war against Mexico, and carried it on in common, as that war was prosecuted, each nation furnishing its fair proportion of men and money, and the same had been terminated by a joint treaty by these allied nations upon the one part, and Mexico upon the other, and this country had been thus acquired, and we were now called upon to divide the acquisition among the several allies, would any gentleman propose to exclude one-half of these independent nations from any part in the division? No gentleman of respectability would hazard his reputation for honesty or intelligence by avowing such an opinion. Are not the States of this Union independent nations, except so far as they have severally abridged their sovereignty by the Constitution? But for the Constitution, upon every principle of justice, each State would be entitled to an equitable part of the new territory. No man dare controvert this. This is but common justice—manifest, unquestionable justice. If it is otherwise under the Constitution, then that is but an instrument of oppression to enable a majority to tyrannize over a minority. This is a palpable absurdity, and cannot therefore be true.

Again: to rule and to regulate, or "to make rules and regulations respecting," does not mean to create or destroy, to introduce or to exclude. It is a legitimate mode of interpreting these words to refer to the manner in which they are used in other parts of the Constitution. By that instrument, Congress has power to "regulate commerce among the several States." Yet it is not pretended that it may exclude or destroy. Again, it gives Congress power "to make rules for the

government and regulation of the land and naval forces." Yet, by the framers of that instrument, it was deemed necessary to go further, and they did so, and directed in the Constitution that Congress shall have power "to raise and support armies," "to provide and maintain a navy."

But, sir, in the hour to which I am limited, I have not time to follow this argument further. The power claimed is nowhere expressly granted in the Constitution, and there is not the slightest ground to infer that it was intended by its framers. There is another class of individuals who, unable to point out any one or more clauses of the Constitution that gives the power of exclusion, say that it results from the whole instrument. Now, sir, let it be remembered that the States that formed the Constitution were equal, and that one great object in view was the maintenance of this equality. This is admitted to be one of the leading objects of the Constitution. With this fact admitted, that the Constitution was formed to preserve this equality, and that nevertheless a power results from this instrument to exclude a part, and thereby to render them unequal, is, to say the least, an absurdity. Do equals added to equals give unequals? "Do men gather grapes of thorns or figs of thistles?" The absurdity has but to be stated to become at once manifest. Such false reasoning is in no case excusable, but least of all to pervert the Constitution of the country, and to justify the usurpation of the rights of a great portion of our good citizens.

There are others who make the claim mainly upon the ground of precedent, and they refer to the ordinance of 1787, excluding slavery from the northwestern territory; but they seem to forge that this ordinance was made before the adoption of the Constitution, and was, in the language of that instrument, an "engagement entered into before the adoption of the Constitution, and there fore declared 'valid;'" and upon this ground it was observed, as preëxisting, and not as created under or by authority of the Constitution. This destroys the whole force of the pretended precedents in relation to the territories subsequently formed north and west of the Ohio river, and a precedents for the first thirty years of this Government.

And here I may remark, that the object intended to be effected by the ordinance of 1787 was not to exclude the slaves then in the United States, but to check their importation. Mr. Madison, in his letter to Mr. Monroe of the 10th February, 1820, speaking of the ordinance of 1787 and after remarking upon the object of the restrictionists, that it is not the welfare of the slave or the check to their increase, that is the object they have in view, says:

"The real object is, to form a new state of parties founded upon local instead of political distinctions, thereby dividing the republicans of the North from those of the South, and making the former instrumental in giving opponents of both an ascendancy over the whole." \* \* \* "I have observed as yet, in none of the views taken of the ordinance of 1787, interdicting slavery northwest of the River Ohio, an allusion to the circumstance, that when it passed the Congress had no authority to prohibit the importation of slaves from abroad." \* \* \* Had such an authority existed, "can it be doubted that it would have been exerted, and that a regulation having merely the effect of preventing the interior disposition of slaves actually in the United States, and creating a distinction among the States in the degree of their sovereignty, would not have been adopted perhaps thought of?"

Here, sir, we have the testimony of Mr. Madison, that this ordinance was not intended to affect



slavery as it then existed, but was adopted as a means of checking the foreign slave trade—a trade which has been long since abolished under our Constitution.

We are next referred to the "Missouri compromise" as being a precedent clearly establishing this power in Congress. When this act was under consideration, the North claimed the power to exclude slavery from every portion of the territory, the South wholly denied it, and the act passed allowing it in part and excluding it from part, and it was called the Missouri compromise; and from that day to this, here and everywhere, when referred to it is called the "compromise." A compromise is not a decision—its very name takes from it all force as a precedent; and further, it was passed by the votes of the North against the majority of the southern members of Congress; yet if gentlemen will insist that it is a precedent, what does it avail? The North claimed the power to abolish slavery in the then Territory of Missouri, or exclude it from becoming a State of this Union; the South denied the power, and insisted that Missouri should be admitted with slaves; the North receded, and Missouri was received with slaves; and Missouri is indebted to the South for her final admission into the Union as a State upon terms of equality with the other States. This is so far a precedent against this power. But in the same act Congress excludes slavery from all other of the Louisiana territory north of 36° 30'. This may be considered as so far a precedent for the power; yet it is but the intended equivalent for the concession against the power in the admission of Missouri. This act being at its enactment a compromise, and all subsequent legislation regarding it as a compromise, like the original, it loses all force as a precedent. This is true as to Iowa and to Arkansas, to Oregon and Minnesota. I then maintain that there is no clear well-established precedent to support the power of exclusion that is claimed. But there may be some who differ with me in opinion; to these I would say a word: suppose you believe that there are some one or more precedents—of what force are they? You know that not one of them met the approbation of the people of the whole Union, nor has any one received cordial acquiescence, but they have been passed by northern majorities and submitted to (not acquiesced in) by the South from attachment to the Union. Sir, if these be precedents, (which I deny,) they avail nothing against the South. And, sir, I may well ask, of what avail all precedents to establish a power, where we have a written Constitution? How many times must Congress usurp a power by sectional majorities, to exclude and oppress a minority before the power becomes legalized, and made a part of the Constitution? Can doing a wrong, make it right to repeat it? If so, then Congress may go on adding usurpation to usurpation, until it may exercise any power that a majority may desire, or until the people are driven to resistance. The one is tyranny, the other revolution; and these are alike to be avoided.

I am advocating no new doctrine—it is that in which I have been brought up. When the Whig party formerly advocated a United States bank, and the Democratic party opposed it, as being not authorized by the Constitution, the friends of that measure being unable to produce any such specific authority in that instrument, were forced to rely upon precedent. It is doubtless remembered with what unanimity the Democrats denied the

force of precedent to add to the Constitution; and now, sir, I regret to see a part (and I am thankful it is but a part) of the northern Democracy, when they suppose a sectional advantage is to be gained, deserting their old principles and their old friends, to join with the enemies of both, and to aid in their destruction.

The Whigs of the South, many of whom have been yielding more and more to their northern friends in their loose construction of the Constitution, may learn a lesson from the present state of affairs, which, I trust, will have the effect to bring them back to the old republican doctrine of strict construction. The great difference between ours and the British constitution is, that theirs is to a great extent made up of precedent, whilst ours is written, fixed, and certain.

Without the *proviso*, what are the rights of the South in these territories? I maintain that a citizen of the South may go there with his slaves and hold them as safely in bondage as he can in the State from which he emigrates. This is fully established by the positions assumed by the *provisoists* themselves, otherwise why pass the "proviso?" Why pass the exclusion, if we are already excluded? During the last Congress the Clayton compromise bill was under discussion; it proposed to prohibit all legislation upon the subject of slavery, leaving it alone to the Constitution whether it did or should exist in the territories; and the whole Congress, north and south, had to vote upon it. Under the provisions of this bill, if the Constitution protected slavery in the territories, then this bill protected it; if it did not, then the slaveholder was excluded, and that by the Constitution. Here the question was fairly presented; and we find every northern anti-slavery man, Abolitionists and Free-Soilers, voting against it, and their leading men, such as Webster and Corwin, assigning the reason, that if it passed, it admitted slavery in the whole territory; while the whole South, with the exception of only eight members of this House and four in the Senate, voted for it—and the South thus voted because it gave the slave interest all that was asked,—its rights under the Constitution, be they what they might. This is the expression of the opinion of the whole Congress except twelve members, that the Constitution, uncontrolled by congressional action, protects slavery in the territories. This, then, is our right under the Constitution, and I insist that it is absurd to contend that the Constitution gives Congress the power to take from us rights which that instrument itself secures to us, (the North, the Abolitionists and Free-Soilers being the judges.) To give these facts their full force, it must be borne in mind that it is asserted by the anti-slavery men that slavery was excluded from these territories by Mexican law previous to its acquisition, and that they contend that these Mexican laws are still in force until expressly repealed; and further, that by the laws of nature, slavery can never exist in any part of this territory. The Clayton compromise forbid the repeal of these assumed Mexican laws, and surely did not affect the laws of nature. Yet in the judgment of these anti-slavery men, to exclude the South from its constitutional rights, they are unwilling to rely upon these alleged Mexican laws which they say are in force, nor are they satisfied with their further position, that it is excluded by the law of nature, but they must go further, and improve upon both, and, in the language of one of their



distinguished men, "reënact the laws of God." Thus it is, error leads to error, and absurdity to absurdity.

We hear it often repeated that slavery cannot be introduced without positive law establishing it. The South asks no such establishment. Now, if these gentlemen believe their own words, what folly it is for them to agitate the country upon the subject, and to hazard the very existence of this Government, to prohibit what they say cannot exist. If the South, desiring to secure a more perfect monopoly of the production of cotton and sugar, were to ask Congress to prohibit the territory of Minnesota from growing these articles, how absurd and ridiculous it would be, nature having rendered that impossible which was sought to be prohibited, and what madness and folly would it be to endanger the Union for such a sublimated absurdity; yet not more absurd than to peril the prosperity of the Union to exclude slavery where they say the laws of God and man render its existence impossible. It is, therefore, certain that they do not believe their own declarations, or they are "regardless of social order and fatally bent upon mischief." Slavery exists in fifteen of the States of this Union, and it is excluded from fifteen. In the States where it exists it was not established by law, but in those where it does not exist it was and is excluded by positive law. It is not even alleged that slavery was ever established anywhere in the United States by positive law, and it may exist everywhere, unless prohibited. I am not discussing the English law—not inquiring into the question of British ethical physiology, that England's soil will cause the shackles of slavery to fall from the African's limbs,—though it is to be regretted that it has not the same effect upon the enslaved and down-trodden millions of the subjects of that boasted land—but I am discussing the American principle. The fact that slavery does or may exist in the United States, wherever it is not prohibited, abundantly establishes my position. And this leaves the States to manage their own internal affairs, and to abolish slavery in their several limits, as may be deemed for the good of its citizens. The Constitution was careful, however, to provide that, even this right to abolish slavery by a State within its own limits, should not be exercised to the prejudice of the citizens of other States, but requires that fugitive slaves from other States "shall be delivered up," so sedulously were the rights of slaveholders secured. I am not to be understood as contending for a power to make slaves of free persons, for this power does not exist in any part of the Union, even in the most *ultra* slave States; but if the individual be a slave, then the principle is, that you may take him and retain him in slavery anywhere that slavery is not prohibited by positive law.

Again: if a citizen of Maryland, or any slaveholding State, sends his slave upon shipboard, his property is protected wherever he may sail upon the high seas, even in the most distant ocean. So long as the flag of the Union floats over him, his rights in his slave are secure. How is this? All ships carry the flag of the Government to which they belong; and our Supreme Court have again and again held, that by construction, the ship thus sailing under its proper flag, however distant, is still a part of the domain of the country whose flag she bears, and that slaves, upon this principle, though upon the far-off sea, are still slaves, and the property of their master. A ship from Mary-

land or Louisiana bears not the flag of its State, for no State has a flag, but it is the flag of the Union that gives protection. If, then, a slave upon a vessel thousands of miles from the United States is still held in slavery, because he is constructively upon the domain of the United States, how much more certainly will he be so held when he is really and truly upon the soil of the Union?

Now, sir, this is our right, which the North threatens to take from us, in relation to the newly-acquired territory. And why this threat? It forms part of a great scheme to abolish slavery throughout the Union. Abolition first attracted attention about fifteen years ago; it then rose in the east, a cloud "like a man's hand," but it has increased until the heavens are black with clouds, which threaten to pour down upon us, not the refreshing and fertilizing rain of the prophets, but a storm of destruction, more like that which fell upon the cities of the plain. What is this great scheme?

Mr. CLAY, on the 7th of February, 1839, in the Senate of the United States, speaking of the varieties of Abolitionists, said:

"And the third class are the real ultra Abolitionists, who are resolved to persevere in the pursuit of their object at all hazards, and without regard to any consequences however calamitous they may be. \* \* \* With this class, the immediate abolition of slavery in the District of Columbia, \* \* \* the prohibition of the removal of slaves from State to State, and the refusal to admit any new State comprising within its limits the institution of domestic slavery, are but so many means conducing to the accomplishment of the ultimate but perilous end at which they avowedly and boldly aim—are but so many short stages in the long and bloody road to the distant goal at which they would finally arrive. Their purpose is abolition—universal abolition—peaceably if they can, forcibly if they must."

Again, he says:

"These are but so many masked batteries, concealing the real and ultimate point of attack. That point of attack is the institution of domestic slavery as it exists in these States. It is to liberate three millions of slaves held in bondage within them."

Now, sir, we are asked to submit to the adoption of "the means conducing to the accomplishment of this perilous end"—to make "these short stages in the long and bloody road;" and, as a recompense, we are to be told that we are good Union-loving citizens. We of the South are second to none in our devotion to the Union. The Union has never been in danger when the South did not stand forth in the front rank of its defenders; and I have yet to see the first southern disunionist, here or elsewhere. We love the Union—the Union of the Constitution—the Union which preserves our liberties. And, sir, our political adversaries know this, and they are attempting to lure us into submission to their aggressions by siren songs of the glories of the Union. Give us, sir, the Constitution. It has been our shield from all dangers, and our conductor through all difficulties; with it we are more than content. The charge of disunion against the South is an unmitigated slander. The South was foremost in the Revolution that established the Union. She was the first to declare for independence of the British Crown, and she acted well her part in that long and bloody struggle which maintained it. And when the war of 1812 was declared, the "second war of independence," the South was true to her duty. The State which I have the honor in part to represent, though then comparatively a new State, sent more men to that war—gallant, brave men, who did good service—than any State in this Union, old or young, large or small. From her admission as a State to this time, the Union has



never called upon her for defence, that her citizen soldiers have not rallied to her standard, and in the hardest fought battles, where danger and death dealt their most fearful destruction, there were Tennesseans fighting and triumphing over the enemies of the Union, and this at the cost of the lives of many of her noblest and bravest sons. And she is ready to do this again and again in defence of the Union. But, sir, the real ground of complaint is not that the South does not love the Union, but that for the sake of the Union she is not willing to submit to every injustice and degradation that the North may desire to place upon her; not that she does not love the Union, but that she loves the Constitution, justice, equality, and her honor, more. These are the soul of the Union which she loves.

But, sir, I desire most earnestly, and the whole South desires, that these difficulties shall be settled amicably, and that the Union shall be preserved. And will not our northern friends come up to the work with that spirit of justice and friendly compromise which established, and has hitherto preserved our liberties? We ask no new rights; we but desire that which the Constitution gives us. The truth cannot be concealed, that a morbid jealousy prevails in the mind of the North against the South. An improper view is taken of slavery; they do not see it in its proper light, nor judge of it by proper rules. It was a remark of Addison, "that misery is not to be measured by the nature of the evil, but by the temper of the sufferer." They judge of slavery as it would be, if enforced against themselves, and not by the "temper" of the African—a race whose ancestors were brought from a barbarous and savage slavery to a humane and Christian bondage, and whose descendants have ever since felt and believed their condition improved by the transfer, and that it is their destiny to live in slavery; and with this destiny, unless excited by northern agitators, they have been content; and it is contentment alone that secures happiness in any condition of life.

Many of the advocates of free-soil wholly disclaim any wish to interfere with the slaves in the States, and insist that their whole desire is to restrain the institution within its present limits. They say that they do not desire to emancipate the slaves, but to prevent their dispersion over any larger area. Their sympathies are not for the slave, but for the "soil"—a strange, wonderful philanthropy. It is not the slave they would emancipate, but it is the earth they would save from the contamination of his touch. All who have any knowledge of the institution, know that the more slaves are dispersed, the more their moral and mental condition is improved, and their wants more kindly relieved by their association with the white race, and that their condition is thereby ameliorated. They talk most eloquently of the shackles of slavery, and of the imprisonment which they suffer. Sir, we do not propose to increase the number of slaves, it is only to enlarge the "prison bounds;" and it is this that so much excites northern sympathizers. Let any one visit and examine the situation of the slaves, where they are held in large numbers, and where they are more sparse, and the difference is manifestly in favor of the latter, and if philanthropy be the prevailing motive, they will at once abandon their free-soil opinions.

The Constitution, as already remarked, is careful to provide that States shall deliver up fugitive slaves

that may come within their limits. This was regarded as a very important provision, yet there is no such provision as to slaves escaping into the Territories. Why was this omitted? For no other reason (which was abundantly sufficient) than that slaves within the Territories were slaves still, and as much under the control of the master as in the State from which they fled. If slavery does not exist in the Territories, (and the Constitution says nothing upon this subject,) then a slave escaping into the Territories will be free; yet no one will pretend that this is or can be true; yet it is so, unless the Constitution protects slavery in the Territories. The only disunionists of which I have any knowledge, are in the North, and there they are quite numerous; some of them have found their way to seats in Congress; some of these men denounce the Union as a "covenant with sin," because of its protection to slavery, and claim to be influenced by moral and Christian motives. I have not the time nor the inclination to discuss this subject. I will not insult the understanding of this House, by proving that Abraham—who is styled a "friend of God," and of whom it was said the Lord "hath given him flocks and herds, and silver and gold, and men servants and maid servants"—was a moral man; that Job, who "was perfect and upright, and one that feared God and eschewed evil," was as good as a modern abolitionist; that St. Paul, with all his zeal and all his knowledge and all his piety, knew as much of morality and Christianity, as these self-styled reformers, when he sent back a runaway slave to his master, or when he encouraged and countenanced the institution by writing most affectionate counsel and wise rules for masters and servants, (the word here translated servants is by the learned, held to mean slaves.) And what shall I say, in reference to that holy Being whose name should be mentioned only with the most profound reverence, the Deity himself, when He stood upon Mount Sinai, clothed in His omnipotence and gave laws to His chosen people, and commanded them to buy of the "heathens round about," for a possession to them and their children; or of the blessed Saviour who spent his life reproving vice and teaching wisdom, and this in the midst of slavery, and yet made no condemnation or reproof of this institution. Sir, the abolitionists for a while repelled the idea that slavery was sanctioned, either by the Bible or by the Constitution; but such has been the force of argument upon this subject, that many of their leaders have been forced to admit both, and to sustain their folly, have been compelled to renounce both the Bible and the Constitution as being immoral and unjust. This is but the natural result of such fanaticism, and the end to which this Anti-slavery and Free-Soil excitement directly tends—this is its morality. And for its patriotism—it desires to sever all political connection with us, because we are no better upon this subject than General Washington, who lived and died a slaveholder.

Sir, I will have no reasoning with this fanatical, impracticable philanthropy, if it deserves no worse name; it is at war with the institutions of society. Borne away by a single idea, it seeks to prostitute the most sacred things to the worst of purposes. It is bringing religion itself to war with the institutions of society, and thereby making it odious, and driving its votaries into the frozen regions of infidelity. It disregards the wise and venerable interpretations of the Bible and the Constitution, that



have grown gray in the lapse of time, which have ever been hallowed by the approval of the good and the great, and they are dividing society into two great classes, "the fanatics who believe everything, and the infidel who believes nothing." They are thus endangering everything that renders society permanent or valuable.

How, then, are these questions to be settled? If it is ever done, and I trust it will be, it must be upon the principles of the Constitution. Congress has nothing to do with the subject of slavery in the Territories, and if we will be content to do only what we are required to do, all will be well. The lamented Polk in his message of December, 1848, says, "the people of the acquired territories when assembled in convention to form State constitutions, will possess the sole and exclusive power to determine for themselves whether slavery shall or shall not exist within their limits." This is certainly true. Then let us leave it to this "sole and exclusive determination." This will satisfy the South, provided we make the "needful rules and regulations" as to other subjects, and do not by a system of *non-action* drive the unprotected people of the territories untimely into the determination of this question.

This is the proper constitutional mode, and the one that should be adopted. If gentlemen will not agree to this, then they can divide it as was done in relation to the Louisiana territory. This was acquired, and afterwards divided; so was Texas divided by continuing the same line; and now continue the same line. This line when established in 1820, was understood to be the line of separation between the slave and non-slaveholding States of the Union, and has been so observed by the South ever since, with unwavering fidelity. Mr. CLAY, who acted an important part in the establishment of that line, said in 1837:

"By the compromise which took place on the passage of the act for the admission of Missouri into the Union in the year 1820, it was agreed and understood that the line of 36° 30' of north latitude should mark the boundary between the free States and the slave States to be created in the territories of the United States ceded by the treaty of Louisiana. \* \* \* But Florida is south of that line, and consequently, according to the spirit of the understanding which prevailed at the period alluded to, should be a slave State. It may be true that the compromise does not in terms embrace Florida, and that it is not absolutely binding and obligatory; but all candid and impartial men must agree that it ought not to be disregarded."

Now, sir, if Mr. CLAY's opinion is worth anything, (and it should be to these gentlemen, for they have for many years taken great pleasure in doing him honor,) then are they uncandid and partial, for they not only "disregard," but are using their most strenuous efforts for its destruction.

As remarked, this has ever been and is still called a compromise; but it should be remembered, that it was mainly made and enforced by the North. It is a northern measure forced upon the South against her wishes; and, notwithstanding this, it has met a strict compliance, except only from its authors. At the close of the revolutionary war, all the territory belonging to the United States, except the district of Maine, was slave territory. The South yielded to you the territory now composing the States of Ohio, Indiana, Illinois, Michigan, and Wisconsin—a country which now has greater resources than had the whole Union at the time of the cession; now an empire as to power in itself—reserving only territory for four new States, to wit: Kentucky, Tennessee, Alabama, and Mississippi. Was this not liberal? The Louisiana territory was soon after acquired, which extended from the Gulf of Mexico to the Pacific ocean. This was all slave territory; but a small part was inhabited by slaves, but they might be lawfully held in any part of it. In 1820, you forced upon the South a compromise,

whereby you took to the North two-thirds of this acquisition. In the first case, the South generously ceded you the larger portion; in the second, you took a still greater share, and, from a love of the Union, the South submitted. And now, sir, we are to adjust the third great acquisition between these two sections of the Union. In the Missouri case, the North had the power, and inasmuch as by the law existing at the time of the acquisition, slavery was permitted in the whole territory, it not only divided the territory, but by positive legislation excluded slavery from that portion which was claimed for the North. This, they maintained, was legal and just. Now, sir, a vast country has been acquired, and one in which, they say, by the laws existing at the time of the acquisition, slavery is excluded; and the North has still the power to dispose of this question. And how does it propose to adjust it? Sir, inasmuch as the North, to secure to herself the larger part of the Louisiana purchase, would and did abolish slavery in such part as she claimed, if she had power to do this, and if a spirit of fairness prevailed, the same power would authorize, and justice would require, that she should now legalize slavery, by positive law, in so much of the new territory as the South should be equitably entitled to. Upon northern principles this could be properly demanded; and if it were to be determined upon the simple rules of justice, as between individuals it would certainly be so decided. Yet the South is not asking this; she is only asking that Congress will not exclude her. The North says to her, you are excluded by Mexican laws; nature has excluded you, and to make certainty still more sure, we will exclude you, not from a part merely, but from every foot of that territory, north and south, east and west. In the first case, they received the territory as a bounty; in the second they took two-thirds, and called it a compromise; and now, in the third and last case, they claim to take all—and claim it as a right. The North regards California as already secured to the non-slaveholding States; and one of their most distinguished men, [Mr. Winthrop,] but a few days since, said it was "a thousand-fold the most important and valuable part of the territories acquired from Mexico;" and yet claiming to have this, the North is still using all means to deprive the South of every possibility to acquire even a share of the refuse territory that remains; and it is required, that we must even yield to this, and surrender this bare possibility of obtaining one foot, upon pain of being called disunionists—yea, even traitors to the Government. And if we submit, what is our reward? We are to be told that we are peaceable citizens, and that, inasmuch as we are in possession of a part of the domain of the Union, and by the plain letter of the Constitution cannot be disturbed, we will be graciously permitted to have that of which they have not the ability to deprive us. If we give up our rights in the territories, they will permit our rights in the States. And if we submit to this, how long will even this be observed? If we would give up all claim north of the compromise line, we were told we should have all south. This is now repudiated. Now we are told, "Make no claim to the territories, and your rights will be respected in the States;" and how long before this will be disregarded? Sir, we have yielded, and yielded, until our duty requires that we shall make a stand in defence of our rights. Every consideration of duty and interest demands it. Let us, then, pass some general measure, either extending the compromise line to the Pacific, or establishing strictly and permanently the doctrine of non-interference, and thus give peace to the country.

Sir, more than seventy years ago our fathers asserted man's capacity for self-government; the civilized world has been ever since observing, with anxious interest, the progress of this experiment, and bailing with joy the ever-increasing evidence of its success; until by universal assent the world is almost prepared to pronounce it complete, and that it is no longer speculative, but a fact demonstrated. And now, sir, upon the eve of this glorious consummation, the North has become so transcendental in its morality, that in zeal for a lower race—a race that has been in slavery to itself from its earliest history—a race, too, which has made its highest attainments in human excellence in the humane bondage of America—they are willing to extend this power of self-government to this inferior race. So blind is northern zeal, that they are ready for this delusion, to sacrifice the hopes of the world for free government; and to blast, ruin, and destroy forever, this freest happiest Government with which Heaven has ever blessed mankind. Thus to extend self-government to others, prove themselves incapable of its maintenance. We point you to the Constitution, and with fraternal feelings we beg you to regard its provisions—we refer you to the principles of justice, and by these we ask you to restrain your encroachment. We appeal to the past, with all its hallowed recollections—to the present, with all its clustering blessings around it—and to the future, with all its bright and promising hopes, for happiness to ourselves and our posterity, to the latest generations—to everything of earth that is dear to man, past, present, and to come—to give us that equality of right to which we are so justly entitled. Do this, and not only will the present darkness be dispelled, but let this spirit of justice ever preside over the deliberations of the Government, and it will be but the dawn of a day of peace and prosperity, that shall grow brighter and brighter, and end but with time's last setting sun.